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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Bell Operating Company Provision) CC Docket No. 96-21
of Out-Of-Region Interstate,)
Interexchange Services)

REPLY COMMENTS

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Sprint Communications Company, L.P. hereby respectfully submits its reply to comments filed March 13, 1996 in response to the above-captioned Notice of Proposed Rulemaking ("NPRM"). As discussed briefly below, there is no merit to the BOCs' assertions that the Telecommunications Act of 1996 prohibits adoption of separate affiliate rules to govern their provision of out-of-region interstate, interexchange services, or that they are unable to engage in discriminatory or anti-competitive activity in the provision of such services.

Numerous parties point out that the BOCs' continuing bottleneck control over access facilities enables them to discriminate in favor of their long distance affiliates as regards price, terms and conditions for terminating in-region access; sharing of customer information; and development and sharing of information on BOC network design.¹ In addition, the BOCs have the ability to discriminate in the provision of non-

¹ See, e.g., Sprint, p. 2; AT&T, pp. 3, 8; MCI, p. 7; Cable & Wireless, p. 1; Comptel, pp. 2-7; Telecommunications Resellers Association (TRA), p. 5; Excel, p. 4.

Title II services such as billing and collection services.²

And, the cooperative relationships between BOCs (e.g., Nynex and Bell Atlantic for the provision of cellular services) could provide incentive to an originating BOC to discriminate in favor of its partner BOC's long distance affiliate.³ Previous audits of BOC operations have revealed BOC abuses (excessive costs, misallocation of costs, inadequate documentation) in accounting for transactions between the BOC and its affiliates.⁴ Given the history of past abuses, and the potential for future abuses, these parties generally agree that, at a minimum, nondominant regulation of the BOCs' provision of out-of-region interstate, interexchange service should be accompanied by safeguards more stringent than those suggested in the NPRM: separate employees, directors and officers; separate books; separate credit arrangements; and arm's length dealing with the BOCs whereby both Title II and non-Title II services are obtained by the BOC affiliate on a generally available, nondiscriminatory, and publicly ascertainable basis. These safeguards are not unreasonable or particularly onerous, especially in view of the fact that such safeguards will have to be implemented in any case when the BOC begins to offer in-region interexchange services.

² See, e.g., Comptel, p. 8; Excel, p. 2.

³ See, e.g., ALTS, p. 5; Comptel, p. 12.

⁴ See, e.g., MCI, pp. 12-15; TRA, p. 20; Ohio PUC, p. 7.

Most of the BOCs, in contrast, object to even the moderate safeguards proposed in the NPRM.⁵ Their objections fall into two broad categories: first, that the NPRM's proposed regulatory regime violates provisions of the 1996 Act which allow the BOCs to provide out-of-region interexchange services immediately upon enactment, and which specifically require a separate subsidiary only for the BOCs' in-region interexchange services; and second, that they lack market power in the interexchange market, as evidenced by their low market share, the high supply and demand elasticities in the interexchange market, and the relative resources of existing IXCs.⁶ Neither of these objections has merit.

It is true that the 1996 Act allows the BOCs to enter the out-of-region, interstate interexchange market upon enactment. However, there is nothing in the NPRM's proposed regulatory structure which would prohibit the BOCs from entering this market immediately. The NPRM simply sets forth a structure for regulating the BOCs once they do enter this market. It gives the BOCs the option of dominant or nondominant regulation, depending

⁵ The exception is Nynex, which supports the NPRM and states that it is willing to accept the three separate affiliate requirements proposed in the NPRM as a condition for non-dominant regulation of its out-of-region interexchange services (p. 3). The fact that Nynex has apparently already established an affiliate which satisfies the structure proposed in the NPRM is proof that these requirements are neither onerous nor an unreasonable barrier to the BOCs' immediate provision of out-of-region interexchange services.

⁶ See, e.g., Ameritech, pp. 2-8; Bell Atlantic, pp. 4-9; BellSouth, pp. 1, 9-11; Nynex, pp. 7-9; Pacific, pp. 4-5; SBC, pp. 4, 9; US West, pp. 2-3.

upon the safeguards the BOC is willing to implement to protect against discriminatory or otherwise anti-competitive behavior. The BOCs are still subject to Sections 201 and 202 of the Act, which mandate just and reasonable rates, and the Commission certainly has the authority to adopt a regulatory regime which ensures compliance with these provisions. Clearly, there is no merit to the argument that the NPRM violates Section 271(b)(2) of the 1996 Act.

It is also true that the 1996 Act explicitly states that a structurally separate organization must be established to govern the BOCs' provision of in-region interexchange services. However, the NPRM does not mandate establishment of a separate affiliate as a precondition for any BOC provision of out-of-region services. Rather, it proposes such safeguards only if the BOC wishes to be subject to nondominant regulation for those services. No separate affiliate is required if the BOC agrees to submit to dominant carrier regulation for its out-of-region interexchange services.

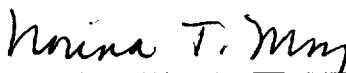
Finally, it is not true that BOCs have no market power in the IX market. As discussed above, the BOCs have both the incentive and ability to favor their long distance affiliate because of their monopoly over the bottleneck access facilities and their control over certain non-Title II services. It is misleading to cite back to their zero market share in the interexchange market, since such statistic does not capture the BOCs' dominance in what is obviously a key market (access which

terminates in-region) and the resources inherent in being a dominant local exchange carrier.

If competitive distortions in the interstate, interexchange market are to be prevented, and if cross-subsidies in the interstate access market are to be avoided, the BOCs should be required to implement the separate subsidiary safeguards proposed by Sprint and others as a precondition for nondominant regulation. These safeguards are necessary; are reasonable; and are not contrary to the provisions of the Telecommunications Act of 1996.

Respectfully submitted,

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March 25, 1996

CERTIFICATE OF SERVICE

I, Joan A. Hesler, hereby certify that on this 25th day of March, 1996, a true copy of the foregoing document was sent via First Class Mail, Postage Prepaid, or Hand Delivered, to each of the parties listed below.


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